

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

PATRICIA CRAWFORD,

Plaintiff,

v.

**Civil Action 2:20-cv-634
Judge Edmund A. Sargus
Magistrate Judge Kimberly A. Jolson**

**COMMISSIONER OF
SOCIAL SECURITY,**

Defendant.

REPORT AND RECOMMENDATION AND ORDER

This matter is before the Court on Plaintiff's Motion for Leave to Appeal *in forma pauperis* (Doc. 21) and Motion for Additional Time (Doc. 23). The Motions were filed at the same time as Plaintiff's Notice of Appeal. (Doc. 22).

"The Sixth Circuit [] requires that all district courts in the Circuit determine, in all cases where the appellant seeks to proceed *in forma pauperis*, whether the appeal is frivolous." *Fendel v. Comm'r of Soc. Sec.*, 2009 WL 2132634, at *1 (S.D. Ohio July 12, 2009) (citing *Floyd v. United States Postal Service*, 105 F.3d 274 (6th Cir. 1997)). Here, Plaintiff was granted leave to proceed *in forma pauperis* in the first instance. (Doc. 4). That determination, however, "is not conclusive, since the appeal involves a separate proceeding." *Fendel*, 2009 WL 2132634, at *1 (citing *Slack v. McDaniel*, 529 U.S. 473 (2000)). The regulations dictate that a plaintiff who was permitted to proceed *in forma pauperis* in the first instance "may proceed on appeal *in forma pauperis* . . . unless the [Court] certifies in writing that an appeal would not be taken in good faith . . ." *Id.* (emphasis added). Pursuant to 28 U.S.C. § 1915(a)(3) an appeal is not taken in good faith where the litigant seeks appellate review of a frivolous issue. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). At base, the relevant consideration is whether the appeal presents a substantial

question that is not frivolous. *Scott v. Patrick*, No. 1:06-cv-568, 2007 WL 426519, at *1 (W.D. Mich. Feb. 2, 2007). Applying these standards, the Undersigned recommends that Plaintiff not be granted leave to appeal *in forma pauperis*, as her appeal would undoubtedly be frivolous.

On November 9, 2020, the Undersigned recommended affirming the Commissioner's decision that Plaintiff is not entitled to benefits under the Social Security Act. (Doc. 15). Thereafter, Plaintiff timely filed her objections to the Report and Recommendation and Defendant filed a response to those objections. (Docs. 17, 18). On March 22, 2021, the Court issued an Opinion and Order overruling Plaintiff's objections and adopting the Undersigned's Report and Recommendation affirming the Commissioner's decision. (Doc. 19). Now, Plaintiff seeks appellate review of that decision. (*See generally* Doc. 22).

In the instant Motion, Plaintiff generally repeats the same claims she made in her objections to the Undersigned's Report and Recommendation. (*See* Doc. 17 at 2 (alleging that the ALJ failed to appropriately consider Plaintiff's gambling addiction); *see also* Doc. 22 at 2 (same)). The Court, however, already entertained these objections and found them to be without merit. (*See* Doc. 19). As a result, Plaintiff has not "satisf[ied] her burden of demonstrating a meritorious claim on appeal." *Ferguson v. Comm'r of Soc. Sec.*, No. 1:07-cv-247, 2008 WL 696610, at *2 (W.D. Mich. Mar. 13, 2008). Accordingly, the Undersigned **RECOMMENDS** Plaintiff's Motion (Doc. 21) be **DENIED** and that any appeal in this matter not be taken in good faith.

Also, because she has already filed her Notice of Appeal (Doc. 23), Plaintiff's Motion for Additional Time to Appeal (Doc. 23) is **DENIED as moot**.

Procedure on Objections

If any party objects to this Report and Recommendation, that party may, within fourteen (14) days of the date of this Report, file and serve on all parties written objections to those specific

proposed finding or recommendations to which objection is made, together with supporting authority for the objection(s). A District Judge of this Court shall make a de novo determination of those portions of the Report or specific proposed findings or recommendations to which objection is made. Upon proper objection, a District Judge of this Court may accept, reject, or modify, in whole or in part, the findings or recommendations made herein, may receive further evidence or may recommit this matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to have the district judge review the Report and Recommendation de novo, and also operates as a waiver of the right to appeal the decision of the District Court adopting the Report and Recommendation. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

IT IS SO ORDERED.

Date: May 28, 2021

/s/ Kimberly A. Jolson
KIMBERLY A. JOLSON
UNITED STATES MAGISTRATE JUDGE